

AMENDED IN SENATE JUNE 18, 2003
AMENDED IN ASSEMBLY MAY 8, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1676

Introduced by Assembly Member Dutra

February 21, 2003

An act to amend Sections 125085, 125090, and 125107 of, and to add Section 125092 to, the Health and Safety Code, relating to AIDS.

LEGISLATIVE COUNSEL'S DIGEST

AB 1676, as amended, Dutra. Human immunodeficiency virus: maternal and newborn health.

Existing law requires a physician and surgeon to obtain a blood specimen from a pregnant woman before or at the time of delivery. Existing law requires the blood specimen to be tested for rhesus (Rh) blood type and the presence of the hepatitis B surface antigen.

This bill would require that the blood specimen also be tested for the presence of the human immunodeficiency virus (HIV). Under the bill, HIV testing would not be required if the pregnant woman has been previously determined to be chronically infected with HIV, as specified. The bill would require certain medical care providers to ensure that the woman is informed of, among other things, the purpose of testing and that the woman has a right to refuse testing.

This bill would also require the department, in consultation with the Office of AIDS and other specified organizations, to develop, by December 31, 2004, culturally sensitive informational material concerning HIV testing to assist the medical care provider in fulfilling

his or her obligations under these provisions. The bill would require that the materials provide information on available referral and consultation resources of experts in prenatal HIV treatment.

This bill would require that once the results of any tests conducted are received, the physician and surgeon or applicable care provider shall ensure that the woman receives information and counseling, as appropriate, to explain the results and the implications to the mother's and infant's health, including any followup care that is indicated.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Women, particularly women of color, are the fastest
4 growing population with AIDS both in the United States and in
5 California. The percentage of annually reported female AIDS
6 cases in California has risen every year since 1983.

7 (b) Universal testing of pregnant women helps decrease the
8 risk of perinatal transmission of HIV to newborns since treatment
9 before, during, and after labor and delivery can help decrease the
10 risk of transmission to the newborn.

11 (c) Even if *in cases where* a woman receives no prenatal care,
12 doctors can take steps to prevent HIV transmission to newborns.
13 If the virus is identified in a woman during childbirth or
14 immediately afterward, her baby can be treated during the first 24
15 hours after birth *and alternatives to breastfeeding can be*
16 *discussed*, thereby substantially reducing the risk of
17 mother-to-child transmission.

18 (d) Although the number of infants born with HIV since 1991
19 has decreased from 1,760 to as few as 280 infants nationwide in
20 2000, ~~the infection of many of these children could have been~~
21 ~~prevented if testing and early treatment had been conducted.~~

22 ~~(e) Recognizing that voluntary systems do not work as well as~~
23 ~~opt-out systems, the United States Centers for Disease Control and~~
24 ~~Prevention specifically urges the testing of all pregnant women for~~
25 ~~HIV within the routine battery of prenatal tests, rather than relying~~
26 ~~upon them to volunteer. 2000, maternal transmission of HIV can~~
27 *be reduced with early detection and treatment.*

1 ~~(e) This year, the United States Centers for Disease Control and~~
2 ~~Prevention (CDC) revised their recommendations on HIV testing~~
3 ~~of pregnant women. The CDC now specifically urges the testing of~~
4 ~~all pregnant women for HIV within the routine battery of prenatal~~
5 ~~tests.~~

6 SEC. 2. Section 125085 of the Health and Safety Code is
7 amended to read:

8 125085. (a) As early as possible during prenatal care, a blood
9 specimen obtained pursuant to Section 125080 shall be submitted
10 to a clinical laboratory licensed by the department or to an
11 approved public health laboratory for a determination of rhesus
12 (Rh) blood type and the results shall be reported to both of the
13 following:

14 (1) The physician and surgeon or other person engaged in the
15 prenatal care of the woman or attending the woman at the time of
16 delivery.

17 (2) The woman tested.

18 (b) (1) In addition, as early as possible during prenatal care, a
19 blood specimen obtained pursuant to Section 125080 shall be
20 submitted to a clinical laboratory licensed by the department or to
21 an approved public health laboratory for a test to determine the
22 presence of hepatitis B surface antigen and the human
23 immunodeficiency virus (HIV), and the results shall be reported
24 to both of the following:

25 (A) The physician and surgeon or other person engaged in the
26 prenatal care of the women or attending the woman at the time of
27 delivery.

28 (B) The woman tested.

29 (2) In the event that other tests to determine hepatitis B
30 infection or HIV infection become available, the department may
31 approve additional tests.

32 SEC. 3. Section 125090 of the Health and Safety Code is
33 amended to read:

34 125090. (a) Subdivision (a) of Section 125085 shall not be
35 applicable if the licensed physician and surgeon or other person
36 engaged in the prenatal care of a pregnant woman or attending the
37 woman at the time of delivery has knowledge of the woman's
38 blood type and accepts responsibility for the accuracy of the
39 information.

1 (b) Subdivision (b) of Section 125085 shall not be applicable
2 if the licensed physician and surgeon or other person engaged in
3 the prenatal care of a pregnant woman or attending the woman at
4 the time of delivery has knowledge that the woman has previously
5 been determined to be chronically infected with hepatitis B or
6 human immunodeficiency virus (HIV) and accepts responsibility
7 for the accuracy of the information.

8 (c) Prior to obtaining a blood specimen collected pursuant to
9 subdivision (b) of Section 125085 or this section, the physician
10 and surgeon or other person engaged in the prenatal care of a
11 pregnant woman or attending the woman at the time of delivery
12 shall ensure that the woman is informed of the intent to perform
13 a test for HIV infection, the routine nature of the test, the purpose
14 of the testing, the risks and benefits of the test, the risk of perinatal
15 transmission of HIV, that approved treatments are known to
16 decrease the risk of perinatal transmission of HIV, and that the
17 woman has a right to accept or refuse this testing. The acceptance
18 of testing for HIV shall be documented in writing on a form
19 developed by the department and the Office of AIDS pursuant to
20 Section 125092, or on a form that is substantially equivalent in
21 content, and signed by the patient. A copy of this form shall be
22 maintained in the medical record. A multispecialty medical group
23 that provides health care services to enrollees of a health care
24 service plan may use a form incorporating the information in this
25 subdivision and in subdivision (d) instead of any separate form
26 developed pursuant to Section 125092.

27 (d) If, during the final prenatal care standard medical tests, the
28 medical records of the pregnant woman do not document a test for
29 rhesus (Rh) blood type, a test for hepatitis B, or a test for HIV, the
30 physician and surgeon or other person engaged in the prenatal care
31 of the woman or attending the woman at the time of labor or
32 delivery shall obtain a blood specimen from the woman for the test
33 that has not been documented. Prior to obtaining this blood
34 specimen, the provider shall ensure that the woman is informed of
35 the intent to perform the tests that have not been documented prior
36 to this visit, including a test for HIV infection, the routine nature
37 of the test, the purpose of the testing, the risks and benefits of the
38 test, the risk of perinatal transmission of HIV, that approved
39 treatments are known to decrease the risk of perinatal transmission
40 of HIV, and that the woman has a right to accept or refuse the HIV

1 test. The acceptance of testing for HIV shall be documented in
2 writing on a form developed by the department and the Office of
3 AIDS, or on a form that is substantially equivalent in content, as
4 described in Section 125092, and signed by the patient. A copy of
5 this form shall be maintained in the medical record. The blood
6 shall be tested by a method that will ensure the earliest possible
7 results, and the results shall be reported to both of the following:

8 (1) The physician and surgeon or other person engaged in the
9 prenatal care of the woman or attending the woman at the time of
10 delivery.

11 (2) The woman tested.

12 (e) After the results of the tests done pursuant to this section and
13 Section 125085 have been received, the physician and surgeon or
14 other person engaged in the prenatal care of the pregnant woman
15 or attending the woman at the time of labor, delivery, or
16 postpartum care at the time the results are received shall ensure that
17 the woman receives information and counseling, as appropriate, to
18 explain the results and the implications for the mother's and
19 infant's health, including any followup care that is indicated. If the
20 woman tests positive for HIV antibodies, she shall also receive,
21 whenever possible, a referral to a provider, provider group, or
22 institution specializing in prenatal care for HIV positive women.
23 Health care providers are also strongly encouraged to seek
24 consultation with other providers specializing in the care of
25 pregnant HIV positive women.

26 (f) The provisions of Section 125107 for counseling are
27 equally applicable to every pregnant patient covered by
28 subdivisions (c) and (d).

29 SEC. 4. Section 125092 is added to the Health and Safety
30 Code, to read:

31 125092. The department, in consultation with the Office of
32 AIDS and with other stakeholders, including, but not limited to,
33 representatives of professional medical and public health
34 advocacy groups, providers of health care to women and infants
35 infected with or exposed to HIV, and women living with HIV, shall
36 develop culturally sensitive informational material adequate to
37 fulfill the requirements of subdivisions (c) and (d) of Section
38 125090, in English, Spanish, and other languages used by the
39 department when providing information to clients under the
40 Medi-Cal program. This material shall also include information on

1 available referral and consultation resources of experts in prenatal
2 HIV treatment. This material shall be completed by December 31,
3 2004.

4 SEC. 5. Section 125107 of the Health and Safety Code is
5 amended to read:

6 125107. (a) For purposes of this section, “prenatal care
7 provider” means a licensed health care professional providing
8 prenatal care within his or her lawful scope of practice. This
9 definition shall not include a licensed health care professional who
10 provides care other than prenatal care to a pregnant patient.

11 (b) The prenatal care provider primarily responsible for
12 providing prenatal care to a pregnant patient shall offer human
13 immunodeficiency virus (HIV) information and counseling to
14 every pregnant patient. This information and counseling shall
15 include, but shall not be limited to, all of the following:

16 (1) A description of the modes of HIV transmission.

17 (2) A discussion of risk reduction behavior modifications
18 including methods to reduce the risk of perinatal transmission.

19 (3) If appropriate, referral information to other HIV
20 prevention and psychosocial services including anonymous and
21 confidential test sites approved by the Office of AIDS.

22 (c) Nothing in this section shall be construed to require
23 mandatory testing. Any documentation or disclosure of HIV
24 related information shall be made in accordance with Chapter 7
25 (commencing with Section 120975) of Part 4 of Division 105
26 regarding confidentiality and informed consent.

27 (d) Notwithstanding Section 125090 or any other provision of
28 law, completion of a statement of acceptance of an HIV test
29 pursuant to Sections 125090 and 125092 shall be sufficient
30 documentation of consent for HIV testing of a pregnant woman or
31 of a woman at the time of labor and delivery, and no laboratory or
32 health care provider shall require any additional written consent or
33 written form as a condition for HIV testing from any woman who
34 is reasonably believed to be pregnant, who is receiving prenatal
35 care, or who is undergoing a panel of tests designated for prenatal
36 patients.